

Remarks

Applicants respectfully request entry of this amendment and reconsideration of this application as amended herein.

Claims 1, 5 and 6 were rejected under 35 USC 112 as indefinite on the ground that the phrase "such as" makes it unclear whether the limitations following the phrase are part of the claimed invention.

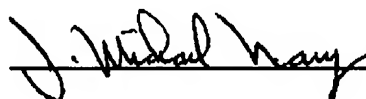
The offending "such as" phrase was in the claims since this application was filed and only in the final rejection (after which Applicants no longer have the right to make amendments) did the Examiner reject these claims on this ground. Applicants attempted to delete the offending clause in two amendments after the final rejection, but they were not entered.

Applicants believe that it would be appropriate for the Examiner to enter this amendment because the rejection based on the "such as" clause was first made in a final rejection and since then Applicants have made every reasonable effort to delete the offending clause. Accordingly, Applicants respectfully request the Examiner to enter the amendments in this Rule 116 Amendment to remove the "such as" phrase.

Applicants realize that all the rejections of only claim 7 have been reversed in the decision on appeal, but that the only ground of rejection of claims 1, 5 and 6 affirmed by the Board was based on indefiniteness of the "such as" clause, which Applicants consistently attempted to delete after the first rejection in the Final Rejection based on that clause. The first attempt was in a proposed Rule 116 amendment filed with the Notice of Appeal, which amendment was denied entry for unrelated issues. The second attempt was submitted with the Reply Brief after Applicants learned that the first Rule 116 Amendment had been denied entry, and a request for reconsideration was also denied. This second Rule 116 Amendment was limited only to the offending "such as" clause, but Applicants have no record that it was ever denied entry. Thus, Applicants have never had a second chance for an examination of their claims on the §112 rejection based on the "such as" clause. In the circumstances, Applicants believe it would be fair to enter this amendment and pass this application to issue.

Applicants realize that reopening prosecution after the decision on appeal is permitted only with approval of the Commissioner, but Applicants believe that entry of this amendment would not constitute a reopening of prosecution, but only the entry of an earlier filed amendment that had never been actually denied entry, but had merely been overlooked. However, if the Examiner declines to treat this amendment submittal in this way, Applicants respectfully request that this submittal be treated as a Petition to the Commissioner for entry of this amendment.

Respectfully submitted,



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